

ORDER NO. 3811

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Mark Acton, Vice Chairman;
Tony Hammond; and
Nanci E. Langley

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators 1

Docket No. R2017-5

Hongkong Post—United States Postal Service
Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

ORDER APPROVING INBOUND MARKET DOMINANT MULTI-SERVICE
AGREEMENT WITH FOREIGN POSTAL OPERATORS 1
NEGOTIATED SERVICE AGREEMENT (WITH HONGKONG POST)

(Issued March 1, 2017)

I. INTRODUCTION

On February 10, 2017, the Postal Service filed notice, pursuant to 39 C.F.R. § 3010.40 *et seq.*, of a Type 2 rate adjustment concerning the inbound portion of a bilateral agreement (Agreement) with Hongkong Post.¹

¹ Notice of United States Postal Service of Type 2 Rate Adjustment, Notice of Filing Functionally Equivalent Agreement, and Notice of Application for Non-Public Treatment, February 10, 2017, at 1 (Notice).

The Postal Service seeks to include the Agreement within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (Foreign Postal Operators 1) product. Notice at 1. For the reasons provided below, the Commission approves the Postal Service's request.

II. BACKGROUND

Product history. The Commission added the Foreign Postal Operators 1 product to the market dominant product list in Order No. 549 and concurrently included two agreements within that product.² The Commission has since approved the inclusion of additional agreements within the same product on grounds of functional equivalence.³

Instant Notice. The Notice includes attachments consisting of an application for non-public treatment of materials filed under seal, a redacted version of the signed Agreement, and public and non-public versions of supporting financial workpapers. Notice at 2-3.

In its Notice, the Postal Service states that the Agreement is functionally equivalent to the baseline agreement with China Post (China Post 2010 Agreement) filed in Docket No. R2010-6.⁴ The Postal Service explains that the Agreement results in an improvement over default rates established under the Universal Postal Union (UPU) Acts for inbound letter post items; improves operational performance; and addresses other data and information requirements in Commission rules. Notice at 5.

² See Docket Nos. MC2010-35, R2010-5, and R2010-6, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010 (Order No. 549). The two agreements within that product included an agreement between the Postal Service and the China Post Group (China Post) and an agreement between the Postal Service and Koninklijke TNT Post BV and TNT Post PakketSERVICE Benelux BV.

³ See, e.g., Docket No. R2012-2, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, November 23, 2011 (Order No. 996).

⁴ *Id.* at 1-2; see also Order No. 549.

The Agreement is intended to take effect on April 1, 2017. *Id.* at 2; *id.* Attachment 2 at 7. The Agreement is to remain in effect until June 30, 2018, unless either party serves the other with a 30-day advance written notice to terminate. Notice, Attachment 2 at 2, 7. Such termination would take place on the last day of the month in which the 30-day notice expires. *Id.* at 2.

Initial Commission action. On February 13, 2017, the Commission issued a notice establishing a docket for consideration of matters raised in the Notice, inviting public comment, and appointing a Public Representative to represent the interests of the general public.⁵

III. THE POSTAL SERVICE'S POSITION

Functional equivalence. The Postal Service posits that the Agreement is functionally equivalent to the China Post 2010 Agreement. Notice at 1-2.

The Postal Service states that the terms of the Agreement fit within the Mail Classification Schedule (MCS) language for the Foreign Postal Operators 1 product and therefore both agreements conform to a common description. *Id.* at 9. The Postal Service also asserts that both agreements are constructed from a similar template; contain many similar terms and conditions; and provide rates for small packets with delivery scanning tendered to the Postal Service from each respective foreign postal operator's territory. *Id.* at 9-10. However, the Postal Service does identify material differences that distinguish the Agreement from the China Post 2010 Agreement.⁶ It asserts that, despite these differences, the Agreement is functionally equivalent to the China Post 2010 Agreement, and the differences do not affect the similarity of market or

⁵ Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, February 13, 2017.

⁶ Differences include, among others, revisions to existing articles and annexes, slight differences between this Agreement and the baseline agreement as a result of negotiations, and the inclusion of Annex 7. *Id.* at 10-12.

cost characteristics between the Agreement and the China Post 2010 Agreement. *Id.* at 10, 12.

Statutory criteria. The Postal Service asserts that the criteria for the Commission's review are whether the Agreement: (1) improves the net financial position of the Postal Service or enhances the performance of operational functions; (2) does not cause unreasonable harm to the marketplace; and (3) is available on public and reasonable terms to similarly situated mailers. *Id.* at 8; see 39 U.S.C. § 3622(c)(10).

With respect to the first criterion, the Postal Service states that it provides information in its workpapers showing the expected financial improvements over UPU default rates. Notice at 5. The Postal Service also identifies improvements that are expected to enhance operational performance: revised rates and terms for small packets with delivery scanning; advanced electronic customs data requirements; improved business settlement processes between the parties; and sortation and induction requirements. *Id.*

With respect to the second criterion, the Postal Service provides several reasons why the Agreement will not result in unreasonable harm to the marketplace. *Id.* at 6. These reasons include Hongkong Post's status as the only entity in a position to avail itself of an agreement of this type and the role of the Postal Service and Hongkong Post, as the designated operator for the United States and Hong Kong, respectively, for the exchange of mail. *Id.* In addition, the Postal Service states that because no other entities are subject to terminal dues rates with respect to inbound small packets with delivery scanning sent under UPU documentation to the United States from Hong Kong, the market for the services offered under the Agreement is in essence limited to its parties. *Id.*

Finally, the Postal Service views the third criterion inapplicable based on its assessment that there are no entities similarly situated to Hongkong Post to which the Postal Service could make a similar agreement available. *Id.* at 8. The Postal Service states that there are no entities similarly situated to Hongkong Post in its ability to

tender small packets with delivery scanning from Hong Kong on the terms and scale contemplated in the Agreement. *Id.* The Postal Service also explains that there are no other entities that serve as a designated operator for letter post originating in Hong Kong. *Id.*

Data collection plan and service performance reporting. The Postal Service intends to report information on the Agreement through the Annual Compliance Report (ACR) and therefore proposes that no special data collection plan be created for the Agreement pursuant to 39 C.F.R. § 3010.43. *Id.* at 7. With respect to service performance measurement, the Postal Service requests that the Agreement be excepted from separate reporting under 39 C.F.R. § 3055.3(a)(3) by virtue of Order No. 996, which established a standing exception for all agreements filed in the Foreign Postal Operators 1 product.⁷

IV. COMMENTS

The Public Representative filed comments on February 23, 2017.⁸ No other comments were received.

Functional equivalence. The Public Representative concludes, based on a review of the Postal Service's filing, that the Agreement is functionally equivalent to the China Post 2010 Agreement. PR Comments at 2.

Statutory criteria. The Public Representative finds that the negotiated rates in the Agreement improve the net financial position of the Postal Service. *Id.* at 2-3. She notes that the Postal Service provides a comparison of the cost coverage at UPU

⁷ *Id.* at 8; see Order No. 996. In Order No. 996, the Commission held that negotiated service agreements with substantially all components of the agreement included in the measurement of other products may be granted an exception from reporting pursuant to 39 C.F.R. § 3055.3(a)(3). Order No. 996 at 7. The Commission further held that functionally equivalent agreements would qualify for the 39 C.F.R. § 3055.3(a)(3) exception. *Id.* Therefore, agreements that fall within the parameters of the Foreign Postal Operators 1 product are excepted from the performance reporting requirements of 39 C.F.R. § 3055.3(a)(3). *Id.* at 7, 8-9.

⁸ Public Representative Comments on HongKong Post Negotiated Service Agreement, February 23, 2017 (PR Comments).

terminal dues rates and negotiated rates. *Id.* at 2. She explains that the cost coverage at the negotiated rates exceeds the cost coverage at UPU terminal dues rates for the term of the Agreement. *Id.* at 2-3.

In addition, the Public Representative states that the Postal Service makes reasonable arguments that the criteria requiring that no unreasonable harm to the marketplace will be caused by the Agreement and requiring that the Agreement be available on public and reasonable terms to similarly situated mailers are not implicated by the Agreement. *Id.* at 3.

The Public Representative states that although the Postal Service identifies four operational changes that should enhance the performance of mail preparation, processing, transportation, or other functions, the Postal Service provides no discussion, documentation, or analysis to support its assertion. *Id.* As a result, she states that she could not evaluate the expected impact of the identified changes on the Postal Service's operational performance under the Agreement. *Id.*

V. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the Agreement, the financial analyses provided under seal, and the Public Representative's comments.

Functional equivalence. The Commission finds that the Agreement is functionally equivalent to the China Post 2010 Agreement. The agreements share similar cost and market characteristics. Differences between the Agreement and the China Post 2010 Agreement do not foreclose a finding that the agreements are functionally equivalent. The Public Representative supports this finding. *Id.* at 2. The Commission, therefore, concludes that the Agreement may be included in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.

Statutory criteria. Under the statutory and regulatory provisions of 39 U.S.C. § 3622(c)(10) and 39 C.F.R. § 3010.40(a), the Commission's approval requires a finding that the agreement either improves the net financial position of the Postal Service or enhances the performance of various operational functions. The agreement also must

not cause unreasonable harm to the marketplace and be available on public and reasonable terms to similarly situated mailers.

The Commission finds that the negotiated rates in the Agreement will improve the net financial position of the Postal Service. The Postal Service compared the cost coverage at UPU and negotiated rates. Notice, Excel file “NONPUBLIC HK_MD_IB_2017.02.10. V3.xlsx.” The comparison indicates that the cost coverage at the negotiated rates exceeds the cost coverage at the UPU terminal dues rates and that the negotiated rates improve the Postal Service’s net financial position. *Id.* The Commission finds that the Postal Service’s filing demonstrates that the negotiated rates are an improvement over the UPU rates and improve the Postal Service’s net financial position.

The Postal Service states that the Agreement contains four operational changes that should enhance the performance of mail preparation, processing, transportation, or other functions. Notice at 5. However, the Public Representative notes that the Postal Service provides no discussion, documentation, or analysis to support its assertion. PR Comments at 3. As a result, she states that she could not evaluate the expected impact of the identified changes on the Postal Service’s operational performance under the Agreement. *Id.*

The statute requires the Agreement to either improve the net financial position of the Postal Service or enhance the performance of various operational functions. 39 U.S.C. § 3622(c)(10)(A). As the Commission concludes that the negotiated rates are an improvement over the UPU rates and improve the Postal Service’s net financial position, it is unnecessary at this time to determine whether the Agreement will enhance the performance of mail preparation, processing, transportation, or other functions.

The statute requires that the Agreement also must be available on public and reasonable terms to similarly situated mailers. 39 U.S.C. § 3622(c)(10). The Postal Service states that it views this criterion as inapplicable in this instance as it is difficult to conceive of a similarly situated mailer. Notice at 8. The Public Representative states that the Postal Service’s arguments that such criteria are not implicated by the

Agreement are reasonable. PR Comments at 3. The Commission concurs with the Postal Service's assessment that there are no entities similarly situated to Hongkong Post. The Commission also finds the Agreement will not cause unreasonable harm to the marketplace given the impact of the contracting parties' status as designated operators in the market.

Reporting exceptions. The Postal Service proposes that no special data collection plan be created for the Agreement, essentially seeking a waiver of 39 C.F.R. § 3010.43 data collection reporting requirements. Notice at 7. Instead, it intends to report information under the Agreement through the ACR and provide information about mail flows from Hongkong Post within the course of the ACR review process. *Id.* The Commission finds the Postal Service's request reasonable and grants the exception. The Commission also approves the Postal Service's invocation of Order No. 996 in support of an exception from separate service performance reporting under 39 C.F.R. § 3055.3(a)(3) on the basis that the standing exception in Order No. 996 continues to apply.

Follow-up submissions. The Agreement is intended to take effect on April 1, 2017, and it is to remain in effect until June 30, 2018, unless either party serves the other with a 30-day advance written notice to terminate. Notice at 2; *id.* Attachment 2 at 2, 7. The Postal Service shall promptly notify the Commission if the effective date of the Agreement differs from the intended effective date. The Postal Service shall also promptly notify the Commission if the Agreement terminates prior to the scheduled expiration date or if the termination date is modified pursuant to the terms of the Agreement.

Conclusion. The Commission finds that the Agreement satisfies relevant statutory criteria and approves its inclusion within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Type 2 rate adjustment requested in the Postal Service's Notice, filed February 10, 2017, in this docket.
2. The Agreement filed in this docket is included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.
3. The Postal Service shall notify the Commission if the effective date of the Agreement differs from the expected effective date identified in the Notice.
4. The Postal Service shall promptly notify the Commission if the Agreement terminates prior to its scheduled expiration date.
5. The Postal Service's request for an exception to the data collection plan requirements under 39 C.F.R. § 3010.43 is granted.
6. The standing exception established in Order No. 996 continues to apply with respect to reporting on service performance pursuant to 39 C.F.R. § 3055.3(a)(3).
7. The following changes to the Mail Classification Schedule go into effect on April 1, 2017.

By the Commission.

Stacy L. Ruble
Secretary

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule (MCS). The Commission uses two main conventions when making changes to the MCS. New text is underlined. Deleted text is struck through.

Part A—Market Dominant Products

1600 Negotiated Service Agreements

1602 International

1602.3 Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1

1602.3.5 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1

Baseline Reference

Docket Nos. MC2010-35, R2010-5 and R2010-6
PRC Order No. 549, September 30, 2010

Included Agreements

Hongkong Post—~~United States Postal Service Letter Post Bilateral~~
Agreement, ~~R2015-5~~R2017-5, expires ~~March 31, 2017~~June 30, 2018
